

JUDGMENT OF THE COURT (Sixth Chamber)

2 June 1994 *

In Case C-414/92,

REFERENCE to the Court, pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the Bundesgerichtshof (Federal Court of Justice) for a preliminary ruling in the proceedings pending before that court between

Solo Kleinmotoren GmbH

and

Emilio Boch

on the interpretation of Article 27(3) of the Convention of 27 September 1968, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris, F. A. Schockweiler (Rapporteur), P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: C. Gulmann,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Solo Kleinmotoren GmbH, by R. A. Schütze, Rechtsanwalt, Stuttgart,
- Emilio Boch, by P. Müller, Rechtsanwalt, Stuttgart, and A. Rizzi and F. Ferria Contin, of the Milan Bar,
- the German Government, by C. Böhmer, Ministerialrat at the Federal Ministry of Justice, acting as Agent,
- the Italian Government, by Professor L. Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by O. Fiumara, Avvocato dello Stato,
- the Commission of the European Communities, by P. van Nuffel, of its Legal Service, acting as Agent, assisted by W.-D. Krause-Ablass, Rechtsanwalt, Düsseldorf,

having regard to the Report for the Hearing,

after hearing the oral observations of Solo Kleinmotoren GmbH, represented by R. A. Schütze and T. R. Klötzel, Rechtsanwälte, Stuttgart, of Emilio Boch and of the Commission at the hearing on 10 February 1994,

after hearing the Opinion of the Advocate General at the sitting on 22 March 1994,

gives the following

Judgment

- 1 By order of 5 November 1992, received at the Court on 15 December 1992, the Bundesgerichtshof referred to the Court for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1) (hereinafter the 'Convention'), two questions on the interpretation of Article 27(3) of the Convention.
- 2 The questions arose in proceedings between Solo Kleinmotoren GmbH ('Solo Kleinmotoren'), a company established in the Federal Republic of Germany, and Emilio Boch, the owner of an agricultural machinery retail sales company established in Italy, concerning an application for an order for enforcement in Germany of a final judgment delivered by a civil court in Italy.
- 3 The file shows that until 1966 Mr Boch sold in Italy, under the trade name 'Solo', agricultural machinery supplied to him by Solo Kleinmotoren. Subsequently, Solo Italiana SpA ('Solo Italiana') began to distribute in Italy the machinery manufactured by Solo Kleinmotoren, which consequently discontinued its supplies to Mr Boch's company. Mr Boch then brought two actions.

4 First, he sued Solo Kleinmotoren in the Tribunale Civile (District Court), Milan (Italy), for breach of the supply contract. In 1975 the Corte d'Appello (Court of Appeal), Milan, ordered the defendant to pay an amount of over LIT 48 000 000, with interest. On Mr Boch's application, an order for enforcement was issued in Germany in accordance with the provisions of the Convention. Following an appeal brought by Solo Kleinmotoren against that enforcement order, the parties concluded a settlement on 24 February 1978 in the Oberlandesgericht (Higher Regional Court) Stuttgart (Federal Republic of Germany). It was worded as follows:

- '1. On Monday 27 February 1978 (Solo Kleinmotoren) shall pay a sum of DM 160 000 (to Mr Boch) by handing over a banker's cheque to M. X.

2. (Solo Kleinmotoren) shall collect the goods described in the "packing list" at its own expense from the carrier Y by 31 March 1978 at the latest. Notification must be sent (to Mr Boch) one week before the goods are collected. (Mr Boch) guarantees that storage costs have been paid for the period until 31 March 1978 and that no other charge is payable on the goods. (Solo Kleinmotoren) waives the warranty on the goods recovered.

3. All the parties' claims against one another arising from their business relationship are hereby resolved. All claims between (Mr Boch) and Inter Solo at Zug are also resolved.

(Mr Boch) undertakes not to assert the claims forming the subject-matter of the present legal dispute against Solo Italiana, Bologna.

4. (Solo Kleinmotoren) shall pay the legal costs, its own non-legal expenses and the costs of the legal agent (of Mr Boch) in the present proceedings; (Mr Boch) shall pay the other expenses himself.'

- 5 Mr Boch commenced a second action against Solo Kleinmotoren and Solo Italiana before the Tribunale Civile, Bologna (Italy), for infringement of the trade name 'Solo' and for unfair competition. In 1979 the Corte d'Appello, Bologna, held that Solo Kleinmotoren and Solo Italiana were jointly liable for misuse of the trade name 'Solo' and acts of unfair competition prejudicial to Mr Boch and ordered the two defendant companies jointly to pay him damages, the quantum to be determined in separate proceedings. In the grounds of its judgment that court examined Solo Italiana's objection that the settlement reached in the German court had disposed of Mr Boch's claims, and held that the settlement could not be relied on in the proceedings before it because it had not been declared enforceable in Italy and because, according to its terms, the subject-matter of the dispute before the courts in Bologna was excluded from the settlement reached by the parties. That judgment of the Corte d'Appello, Bologna, subsequently became final.

- 6 In 1981 Mr Boch brought proceedings before the Tribunale Civile, Bologna for determination of the quantum of damages to be paid by Solo Kleinmotoren and Solo Italiana pursuant to the judgment of the Corte d'Appello, Bologna. On 18 February 1986 the Tribunale Civile ordered the two defendant companies to pay Mr Boch LIT 180 000 000 by way of damages. The Corte d'Appello, Bologna, dismissed the appeal brought by Solo Kleinmotoren against that judgment. Both courts rejected Solo Kleinmotoren's argument that the settlement approved by the Stuttgart court resolved all the claims which the parties had against one another, and held that this question had been settled definitively by the judgment given in 1979 by the Corte d'Appello, Bologna.

- 7 Mr Boch then lodged an application in the Landgericht (Regional Court) Stuttgart to obtain enforcement in Germany of the judgment of the Tribunale Civile, Bologna, of 18 February 1986. The Landgericht granted the application. After the Oberlandesgericht Stuttgart had dismissed the appeal brought by Solo Kleinmotoren against the Landgericht's decision, Solo Kleinmotoren appealed on a point of law to the Bundesgerichtshof and asked it to annul the Oberlandesgericht's order

and dismiss the application for an order for the enforcement of the Italian judgment.

- 8 Solo Kleinmotoren contended before the Bundesgerichtshof that Article 27(3) of the Convention precluded enforcement in Germany of the Italian judgment since it was incompatible with the settlement concluded by the parties on 24 February 1978 in the Oberlandesgericht Stuttgart. In support of that argument, Solo Kleinmotoren maintained that the settlement brought to an end all the parties' reciprocal rights and obligations arising from their previous business relationship, including Mr Boch's claims which had been upheld by the judgment delivered on 18 February 1986 by the Tribunale Civile, Bologna.

- 9 The Bundesgerichtshof, unsure whether a court settlement can be treated as a 'judgment given in a dispute between the same parties in the State in which recognition is sought' for the purposes of Article 27(3) of the Convention and whether such a settlement therefore precludes, under the provisions of the Convention, recognition and enforcement of a judgment given in another Contracting State which is irreconcilable with that settlement, stayed the proceedings until the Court of Justice has given a preliminary ruling on the following questions:

'Can a judgment within the meaning of Article 27(3) of the Brussels Convention, with which the judgment whose recognition is sought is irreconcilable, also be an enforceable settlement which is reached by the same parties before a court of the State in which recognition is sought in order to settle legal proceedings which are in progress?

If so, does that answer apply to all the terms of that settlement or only to those which are independently enforceable under Article 51 of the Brussels Convention and possibly only if the conditions for enforcement are met?’

The first question

10 In answering this question it must be borne in mind at the outset that in derogation from the principle laid down in the first paragraph of Article 26 of the Convention, according to which a judgment given in a Contracting State is to be recognized in the other Contracting States without any special procedure being required, Articles 27 and 28 of the Convention list exhaustively the grounds for refusing to recognize such a judgment.

11 Thus, according to Article 27 of the Convention,

‘A judgment shall not be recognized:

...

(3) if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;

...’

12 The first paragraph of Article 31 of the Convention provides:

‘A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.’

13 The second paragraph of Article 34 of the Convention provides:

‘The application may be refused only for one of the reasons specified in Articles 27 and 28.’

14 On the question whether a court settlement such as that at issue in the main proceedings constitutes a ‘judgment’ within the meaning of Article 27(3), it is to be noted that Article 25 of the Convention, which appears under Title III — ‘Recognition and Enforcement’— provides:

‘For the purposes of this Convention, “judgment” means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.’

15 The very wording of Article 25 shows that the definition of ‘judgment’ given in that provision refers, for the purposes of the application of the various provisions

of the Convention in which the term is used, solely to judicial decisions actually given by a court or tribunal of a Contracting State.

- 16 As is explained in the Report of the Committee of Experts on the Convention (OJ 1979 C 59, at the foot of p. 42), Article 25 expressly treats the determination of costs by an officer of the court as a judgment since, under the German Code of Civil Procedure which makes provision for this, the registrar acts as an officer of the court which decided on the substance of the matter and, in the event of a challenge to the registrar's decision, the court decides the issue.
- 17 It follows from the foregoing that in order to be a 'judgment' for the purposes of the Convention the decision must emanate from a judicial body of a Contracting State deciding on its own authority on the issues between the parties.
- 18 That condition is not fulfilled in the case of a settlement, even if it was reached in a court of a Contracting State and brings legal proceedings to an end. Settlements in court are essentially contractual in that their terms depend first and foremost on the parties' intention, as the Experts' Report explains (op. cit., p. 56)
- 19 Moreover, a different construction cannot be entertained where the application of Article 27(3) of the Convention is concerned.

20 As has already been stated in paragraph 15 of this judgment, the definition of 'judgment' given in Article 25 applies to all the provisions of the Convention in which that term is used. Moreover, Article 27 constitutes an obstacle to the achievement of one of the fundamental objectives of the Convention, which is to facilitate, to the greatest extent possible, the free movement of judgments by providing for a simple and rapid enforcement procedure. Article 27 must therefore be interpreted strictly, which precludes treating a court settlement as a judgment given by a court or tribunal.

21 The Report of the Committee of Experts states elsewhere (*op. cit.*, p. 45), with regard to the ground for refusing recognition set out in Article 27(3) of the Convention, that 'the rule of law in a State would be disturbed if it were possible to take advantage of two conflicting judgments'. Such a risk of disturbance only assumes the gravity required to justify, under the Convention, refusal of recognition and enforcement of a judgment given in another Contracting State, whose irreconcilability with a judgment given between the same parties in the State where recognition is sought is pleaded, if the latter decision is a judgment of a court which itself determines a matter at issue between the parties.

22 Furthermore, the case of court settlements is governed expressly by Article 51 of the Convention, which falls under Title IV, headed 'Authentic Instruments and Court Settlements', and which lays down specific rules for their enforcement.

23 According to that provision;

'A settlement which been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State in which enforcement is sought under the same conditions as authentic instruments.'

- 24 In derogation from the system of rules governing enforcement of judgments, the first paragraph of Article 50 of the Convention provides that enforcement of an authentic instrument in a Contracting State other than the State in which it was formally drawn up or registered and is enforceable may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.
- 25 In view of all the preceding considerations, the reply to the first question submitted by the Bundesgerichtshof must be that Article 27(3) of the Convention is to be interpreted as meaning that an enforceable settlement reached before a court of the State in which recognition is sought in order to settle legal proceedings which are in progress does not constitute a 'judgment', within the meaning of that provision, 'given in a dispute between the same parties in the State in which recognition is sought' which, under the Convention, may preclude recognition and enforcement of a judgment given in another Contracting State.

The second question

- 26 In view of the answer given to the first question, there is no need to answer the second question.

Costs

- 27 The costs incurred by the German and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Bundesgerichtshof by order of 5 November 1992, hereby rules:

Article 27(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is to be interpreted as meaning that an enforceable settlement reached before a court of the State in which recognition is sought in order to settle legal proceedings which are in progress does not constitute a 'judgment', within the meaning of that provision, 'given in a dispute between the same parties in the State in which recognition is sought' which, under the Convention, may preclude recognition and enforcement of a judgment given in another Contracting State.

Mancini

Kakouris

Schockweiler

Kapteyn

Murray

Delivered in open court in Luxembourg on 2 June 1994.

R. Grass

G. F. Mancini

Registrar

President of the Sixth Chamber